NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1151 of 2011

United India Insurance Company Limited, through: its Branch Manager, Branch Office Stadium Road, T.P. Nagar, Korba, District Korba, Chhattisgarh

---- Appellant

Versus

1. Badriprasad Kansari, S/o. Late Sudarshan Kansari, Aged about 58 years,
2. Smt. Sushila Kansari, W/o. Badriprasad Kansari, Aged about 48 years,
3. Ku. Prabha Kansari, D/o. Badriprasad Kansari, Aged about 25 years,
4. Pradip Kumar Kansari, S/o. Badriprasad Kansari, Aged about 21 years,
5. Nepal Kumar Kansari, S/o. Badriprasad Kansari, Aged about 16 years,

   All are R/o. Village Hanuman Chowk, Champa, Hall Mukam Ward No.2, Kaserpara, Sakti, District Janjgir-Champa, Chhattisgarh
6. Munnalal Karsh, S/o. Shyamlal @ Bagru Karsh, Aged about 30 years, R/o. Bavanbudi, Jaijepur, Tahsil Jaijepur, District Janjgir-Champa, Chhattisgarh
7. Smt. Kamlesh Tiwari, W/o. Devesh Tiwari, Link Road, Janjgir, Near Complex, Janjgir, District Janjgir-Champa, Chhattisgarh
8. Smt. Lalita Agrawal, W/o. Kailash Kumar Agrawal, R/o. 145 T.P. Nagar, Korba, District Korba, Chhattisgarh

----Respondents

AND

MAC No. 718 of 2017

United India Insurance Company Limited, through: its Branch Manager, Branch Office Stadium Road, T.P. Nagar, Korba, District Korba, Chhattisgarh

---- Appellant

Versus

1. Nitin Kumar Dubey S/o Shantilal Dubey, Aged About 17 Years, Minor Through Natural Guardian Father Shantilal Dubey S/o Bisahulal Dubey, Aged About 45 Years, R/o Sonar Para Champa, Hall Mukam Bhadarapara, Balko Nagar, Tah. And Distt. Korba, Chhattisgarh
2. Munalal Karsh S/o Shyamlal @ Bagru Karsh, Aged About 30 Years R/o Bavanbudi, Jaijepur, Tah. Jaijepur, Distt. Janjgir-Champa, Chhattisgarh
3. Smt. Lalita Agrawal W/o Kailash Kumar Agrawal, R/o 145 T.P. Nagar, Korba, Distt. Korba, Chhattisgarh
4. Smt. Kamlesh Tiwari W/o Devesh Tiwari, Link Road Janjgir, Near Complex, Janjgir, Distt. Janjgir-Champa, Chhattisgarh

5. Bharat Singh Vist S/o Shridhar Vist, Proprietor, B.S. Associate, Agrasen Chowk New Rama Cloth Market, Bilaspur, R/o Neharu Chowk, Near State Bank, Tah. And Distt. Bilaspur, Chhattisgarh

----Respondents

AND

MAC No. 765 of 2017

United India Insurance Company Limited S/o Through Its Branch Manager, Branch Office Stadium Road, T.P. Nagar, Korba, District Korba, Chhattisgarh.

---- Appellant

Versus

1. Smt. Shanti Bai W/o Devprasad Soni, Aged About 50 Years
2. Devprasad Soni, S/o. Late Shri Ganeshram Soni, Aged About 60 Years
3. Vinod Kumar, S/o Devprasad Soni, Aged About 24 Years
4. Manoj Kumar Soni, S/o Shri Devprasad Soni, Aged About 30 Years
5. Saroj Devi, D/o Devprasad, Aged About 33 Years

   All are R/o Sonarpara, Champa, District Janjgir-Champa, Hall Mukam Behind Ram Mandir, Balko Nagar, Tah. And District Korba, Chhattisgarh
6. Munalal Karsh, S/o Shyamlal @ Bagru Karsh, Aged About 30 Years R/o Bavanbudi, Jaijepur, Tah. Jaijepur, District Janjgir-Champa, Chhattisgarh.
7. Smt. Lalita Agrawal, W/o Kailash Kumar Agrawal, R/o 145, T.P. Nagar, Korba, District Korba, Chhattisgarh.
8. Smt. Kamlesh Tiwari, W/o Devesh Tiwari, R/o. Link Road Janjgir, Near Complex, Janjgir, District Janjgir-Champa, Chhattisgarh.

---- Respondents

For Insurance Company	:	Mr. Dashrath Gupta, Advocate
For Claimants	:	Mr. Deepak Kumar Singh, Advocate
For Subsequent Purchaser	:	Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/02/2018

1. These are three appeals arising out of the different claim cases from the same accident.

2. It is a case where on 27.05.2007 an accident occurred between a motorcycle bearing registration No. CG/11/6953, which was being

driven by Ashok Kumar Soni and one Nitin Kumar Dubey was the pillion rider and they were hit by a Hyva Truck bearing registration No. CG/04/G/1459, of which the registered Owner was one Smt. Lalita Agrawal wife of Kailash Kumar Agrawal and the vehicle was sold by Smt. Lalita Agrawal to one Smt. Kamlesh Tiwari wife of Devesh Tiwari. At the time of accident the vehicle was in possession of Smt. Kamlesh Tiwari, though the registration was not got transferred from the concerned R.T.O.

3. As a result of the accident Ashok Kumar Soni and one Pramod Kansari succumbed to the injuries that they have suffered and Nitin Kumar Dubey had received grievous injuries from the said accident. The legal representatives of Ashok Kumar Soni filed Motor Accident Claim Case No. 65/2014, likewise the injured Nitin Kumar Dubey filed Motor Accident Claim Case No. 13/2014 and the legal representatives of Pramod Kansari had filed Claim Case No. 62/2008.

4. So far as the claim petition arising out of the death of Pramod Kansari, the same stood decided vide award dated 18.07.2011 and the other two claim cases i.e. in respect of the injured Nitin Kumar Dubey and the deceased Ashok Kumar Soni, the said claim applications stood decided vide award dated 17.01.2017.

5. MAC No. 1115/2011 is an appeal arising out of the death of Pramod Kansari arising out of Claim Case No. 62/2008, which was decided by the Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, Chhattisgarh on 18.07.2011. MAC No. 718/2017 is an appeal preferred in Claim Case No. 13/2014 in respect of the

injured Nitin Kumar Dubey. MAC No. 765/2017 is an appeal preferred against the Motor Accident Claim Case No. 65/2014 in respect of deceased Ashok Kumar Soni. These two appeals i.e. MAC Nos. 718/2017 & 765/2017 were decided by the Motor Accident Claims Tribunal, Korba vide impugned award dated 17.01.2017.

6. Vide the three awards the Tribunal has awarded a compensation of Rs.2,52,500/- in Claim Case No. 62/2008 and Rs.1,50,000/- in Claim Case No. 13/2014 and Rs.4,24,000/- in Claim Case No. 65/2014 and the liability of payment of compensation has been fastened upon the present appellant- Insurance Company.

7. It is this liability fastened upon the Insurance Company, which is under challenge in these three appeals.

8. The point of issue raised by the Insurance Company in the instant case is that it is a case where the cheque which was issued by the registered Owner for the issuance of the policy stood dishonoured on account of insufficient fund and accordingly, the Insurance Company had cancelled the policy. Intimation in respect of cancellation was also sent to by registered post to the registered Owner and also to the concerned R.T.O. in respect of cancellation of the policy.

9. According to the counsel for the Insurance Company, the intimation of cancellation of the policy was much prior to the date of accident and it has to be presumed that there was a deemed service of intimation to this authority including the registered Owner. Therefore once there is an intimation to the insured in respect of cancellation of

the policy, the liability thereafter cannot be fastened upon the Insurance Company and the finding to that effect is bad in law.

10. The counsel for the respondents however opposing the appeals submits that it is a case where the Insurance Company has not led sufficient cogent evidence to substantiate their contentions, so far as the dishonouring of the cheque is concerned. He submits that the Insurance Company has only produced certain photocopies, which were not proved by producing the original before the Tribunal and therefore only on the basis of the photocopy; the liability of the Insurance Company cannot be absolved. It was further contended that only on the basis of the photocopies, it cannot be said that the Insurance Company has discharged its burden effectively proving the cancellation of policy. It was contended by the respondents that the original dispatch register showing intimation sent by the Insurance Company, so also the original postal receipt of the registered intimation to the registered Owner also were not produced before the Tribunal and therefore the Tribunal has rightly fastened the liability upon the Insurance Company.

11. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects is that the Insurance Company in the present appeals by way of an application under Order 41 Rule 27 has brought on record the original receipt of the postal receipt sent to the registered Owner, so also to the concerned R.T.O. Likewise it is also contended that the Insurance Company does have the original dispatch register also to establish that they have promptly sent intimation to the registered Owner as well as to the R.T.O. in respect of the cancellation of policy. However, it appears

that the original of these records were not produced before the Tribunal at the time of evidence.

12. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the three awards are set-aside and the matter is sent back to the concerned Tribunal for a fresh adjudication of the matter after granting an opportunity of hearing to the Insurance Company to prove the aspect of proper intimation having being sent to the registered Owner by producing the registered postal receipt, so also the original dispatch register in this regard. Since, out of these three appeals, two claim applications have been decided by the Court at District Korba and one has been decided by the Tribunal at Sakti, District Janjgir-Champa, it would be more appropriate if all these three appeals are sent back to the Motor Accident Claims Tribunal, Korba for deciding all the three claim cases by the Tribunal at Korba itself. The 3rd matter of Janjgir-Champa also be considered and decided by the Tribunal at Korba itself so that there may not be any contradictory findings.

13. Since all the parties are present before this Court, let the parties appear before the Tribunal, at Korba on the 6th of March, 2018, by which date the Registry should ensure that the records as well as the order of this Court is sent to the Motor Accident Claims Tribunal, Korba.

14. The matter which is being sent from the Tribunal at Janjgir-Champa also would stand transferred to the Tribunal, at Korba and proceed further.

15. It is made clear that all the original records, which have been produced by the Insurance Company in these appeals, subject to their furnishing photocopies of the same; the original may be returned back to the Insurance Company.

16. The three appeals are thus allowed in part and the impugned award stands set-aside and the matter is remitted back to the Motor Accident Claims Tribunal, Korba for a fresh adjudication.

Sd/-
(P. Sam Koshy)
Judge

Ved